REMARKS

Claims 1, 21, 28, & 29 - 103 Rejection – Grosh 6,195,646

As discussed and agreed at the 07/05/2006 interview, there are several important differences between the method disclosed in Grosh and the claimed invention. Grosh's operating principles are fundamentally different than those of the invention, and thus it would not be obvious to modify Grosh to meet the invention's claims.

I. Grosh Does Not Disclose Pricing a Commodity Over a Period of Time, as in the Invention.

- Grosh's time aspect refers not to a period of time over which the commodity will be valued, but instead to the "freshness" or timeliness of the data, which will affect the price. In other words, the "timely" dimension in Grosh refers to an aspect of the data (its age), and *not* to a time period over which the commodity will be valued. The valuation of the data in Grosh *does not* take place over a period of time, as in the invention – instead, Grosh's valuation is instantaneous.

- See Office Action, page 3, point 6 (b): Grosh does not disclose determining at a first time period *during the pricing period*, as defined in the claims. *Grosh has no pricing period* – again, his data valuation is instantaneous.

II. Grosh Does Not Disclose the "Portionality" Aspect of the Invention.

- See Office Action, page 4, point 6 (c-f): Grosh does not at all disclose the portionality aspect of the invention – i.e., valuing a portion of the commodity at one price and a second portion of the commodity at another price. The Office Action contends that applying Grosh's everyday pricing model vs. his weekend pricing model to a given piece of data satisfies this aspect of the claims, but this is incorrect. Grosh's everyday vs. weekend pricing merely applies a different pricing model to *all of the supplier's data* depending on whether it happens to be a weekend or not when the data is sold. This is clearly not the same thing as deliberately portioning out pieces of the commodity at a series of successive prices, as in the invention.

III. Grosh Does Not Disclose the Data Supplier Not Controlling the Price Entirely.

- The claims distinctly define that the commodity will have a future, unknown periodic market price not controlled by the first party but established by a market for the commodity. This is simply not present in Grosh. In Grosh, even when there are demand dimensions included in the data supplier's price, *the supplier* decides whether to include them or not in the price, and to what extent. And it would not be obvious to modify Grosh to meet this aspect of the claim(s), since doing so would alter Grosh's basic operating principles.

  MPEP 2143.01 states:

  > "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F. 2d 810, 123 USPQ 349 (CCPA 1959)".

IV. Grosh Does Not Disclose Pricing an Agricultural Commodity.

- Grosh does not disclose pricing an agricultural commodity, as distinctly defined in the claims. The Office Action concedes this, but then does not show why it would be obvious to modify Grosh to handle physical commodities like agricultural products. Indeed, Grosh *teaches against* such a modification, because he *distinguishes* his method from those that value physical objects (see Col. 1, lines 55-67). In short, Grosh's method is *deliberately designed* for valuing intangibles like information or data – not tangible items – and for that reason it would not be obvious to modify it to meet the claims.

V. It Would Not be Obvious to Modify Grosh to Add the Enormous Amount of Material That is Missing From It and Defined in the Claims, Especially Since There is No Motivation in Grosh to Do So.

- See Office Action, page 5: The Office Action concedes that there is an enormous amount of the claim(s) that Grosh does not show, but contends that all of this missing material can be supplied by simply applying Grosh's model to determine the price of a commodity in a futures contract, and that it would be obvious to make this change in order to "provide more pricing efficiency". First of all, the invention does not involve merely pricing a commodity in a typical futures contract, and the specification and claims clearly define that. A futures contract involves paying a certain sum to guarantee the right to buy or sell something at a predetermined price in the future – and that is entirely different than what occurs in the

invention. In the invention, the future price is unknown and not predetermined – and the claims clearly define that.

- Second, there is simply no motivation to change Grosh in such a manner. Grosh is a complete solution, by itself, *to an entirely different problem than the invention* – that is, the valuing of intangible data vs. the sequential valuing of physical commodities. Applicant cites *Wright*, 6 USPQ 2d 1959 (1988) as support that solving a different problem than the prior art militates towards patentability. In addition, making such a change would alter Grosh's basic operating principles, and that makes it non-obvious (see MPEP 2143.01, above).

- Third, simply making a bare contention that the change would "provide more pricing efficiency" is not sufficient. The Office Action must support this contention with evidence – a suggestion *by the prior art* of the desirability and thus the obviousness of making the modification. In addition, it is not clear at all what is meant by the general term "more pricing efficiency". The Office Action must show what the specific advantage to be gained is, and why it would be obvious to modify Grosh to obtain it. In short, in accordance with M.P.E.P. 706.02, *Ex parte Clapp*, 27 U.S.P.Q. 972 (P.O.B.A. 1985), and *Ex parte Levengood*, 28 USPQ2d 1300 (P.O.B.A. 1993), the Office Action *must provide a factual basis* to support its conclusion that a proposed modification would have been obvious.

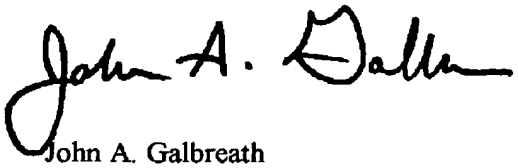
INVENTOR INTERVIEW SUMMARY

Pursuant to MPEP § 2281, Inventor hereby adopts the substance of the 07/05/2006 interview noted on the Interview Summary. Applicant and Examiner agreed in the interview that the current claims overcame the Grosh reference on both a 102 and 103 basis, and that withdrawing the Office Action rejections was thus appropriate.

CONCLUSION

For all of the above reasons, Applicant submits that the claims all define patentably over the prior art. Therefore Applicant submits that this application is now in condition for allowance, which action they respectfully solicit.

Respectfully,



John A. Galbreath
Reg. # 46,718
Galbreath Law Offices, P.C.
2516 Chestnut Woods Court
Reisterstown, MD 21136
Tel. (410) 628-7770

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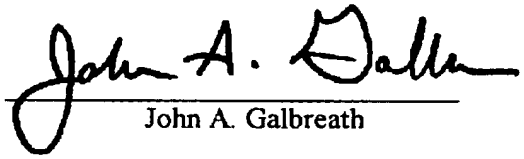

John A. Galbreath